

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RAYMOND PRICE, JR., :
: Plaintiff :
: NO. 3:CV-06-1951
-vs- :
: (Judge Kosik)
: Christopher Powell, :
: Defendant :

MEMORANDUM AND ORDER

Background

John Raymond Price, Jr., an inmate currently confined at the Lackawanna County Prison, Pennsylvania, filed this action on a form used by a prisoner in filing a civil rights complaint pursuant to 28 U.S.C. §1331. Named as defendant is Christopher Powell, Jr. Along with his complaint, plaintiff submitted an application seeking leave to proceed in forma pauperis and an Authorization form. (Docs. 2, 3.) He has also filed a motion for summary judgment. (Doc. 4.) On October 3, 2006, an Administrative Order was issued directing the warden at the Lackawanna County Prison to commence deducting the full filing fee from plaintiff's prison trust fund account. (Doc. 5.) For the reasons that follow, the Administrative Order will be vacated and plaintiff granted in forma pauperis status for the sole purpose of filing the instant action.

The complaint will be dismissed without prejudice to plaintiff to reassert his claims in a properly filed habeas corpus petition.

Discussion

In the instant case, plaintiff claims that "[c]ounsel was ineffective, failing due process in neglecting to instruct the jury of self defense verdict causing case to be decided as justification of simple assault." As relief, he seeks dismissal of all charges.¹ Thus, plaintiff is clearly challenging his present confinement and is seeking his release from prison.

It is well-settled that a habeas corpus petition is the proper mechanism to be brought by a prisoner who seeks to challenge either the fact or duration of his confinement in prison. Preiser v. Rodriguez, 411 U.S. 475 (1973), Telford v. Hepting, 990 F.2d 745, 748 (3d Cir.), cert. denied, 510 U.S. 920 (1993). Federal habeas corpus review is available where the deprivation of rights is such that it necessarily impacts the fact or length of detention. Leamer v. Fauver, 288 F.3d 532 (3d Cir. 2002). From a careful review of the instant complaint, plaintiff does not allege a conditions of confinement claim, but rather challenges the legality of his present confinement and seeks his immediate release from custody. As such, the complaint will be dismissed, without prejudice, to allow plaintiff to pursue his claims in a properly filed petition for writ of habeas corpus.

¹In his request for relief, plaintiff states that he wants the court:

1. Dismiss all charges as per Com vs. Banks decision.
2. Instruction as in Com vs. Bailey should have been instructed.

**ACCORDINGLY, THIS 16th DAY OF OCTOBER, 2006, IT IS HEREBY
ORDERED AS FOLLOWS:**

1. The Administrative Order issued by the Court on October 3, 2006 is hereby vacated. The Clerk of Court is directed to cease collecting any funds from Plaintiff's inmate account, and to refund any monies previously submitted by the prison to Plaintiff. Plaintiff will be granted in forma pauperis status for the sole purpose of filing this action.
2. The complaint is dismissed, without prejudice.
3. Plaintiff, if he so chooses, may reassert his claims in a properly filed habeas corpus action.
4. The Clerk of Court is directed to close this case.
5. Any appeal from this Order will be deemed frivolous, without probable cause and not taken in good faith.

s/Edwin M. Kosik
United States District Judge